

No. SC95532

**BEFORE THE
MISSOURI SUPREME COURT**

**CHARLES AND MARY ANN HARTER
Appellants,**

v.

**DIRECTOR OF MISSOURI DEPARTMENT OF REVENUE,
Respondent.**

APPEAL FROM THE ADMINISTRATIVE HEARING COMMISSION

RESPONDENT'S BRIEF

Respectfully submitted,

**CHRIS KOSTER
Attorney General**

**Curtis M. Schube
Assistant Attorney General
Missouri Bar No. 63227
P.O. Box 899
Jefferson City, Missouri 65102
(573) 751-7728
(573) 751-5660 (Facsimile)
Curtis.Schube@ago.mo.gov**

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	2
STATEMENT OF FACTS.....	5
ARGUMENT.....	9
1. The Harters Lack Standing to Address Disability Because They Are Not an Aggrieved Party	9
I. The Administrative Hearing Commission Had the Authority to Dispose of this Matter by Summary Decision Because Section 535.073.3, RSMo Requires the Administrative Hearing Commission to Establish Rules for Summary Decision	12
II. The AHC Correctly Calculated the Harter’s “Income” for the Purpose of Calculating Their Property Tax Credit.....	15
CONCLUSION	22
Certificate of Service and Compliance with Rule 84.06.....	23

TABLE OF AUTHORITIES

Cases

Armstrong v. Elmore,

990 S.W.2d 62 (Mo. App. W.D. 1999) 11

City of Brentwood v. Barron Holdings Intern.,

66 S.W.3d 139 (Mo. App. E.D. 2001). 9

Clements v. Pittman,

765 S.W.2d 589 (Mo. banc 1989)..... 12

E&B Granite, Inc. v. Director of Rev.,

331 S.W.3d 314 (Mo. banc 2011)..... 20

Goerlitz v. City of Maryville,

333 S.W.3d 450 (Mo. banc 2011)..... 20

Healthcare Services of the Ozarks Clements v. Copeland, 198 S.W.3d 604 (Mo.

banc 2006) 12

HHC Medical Group, P.C. v. City of Creve Coeur Bd. Of Adjustment,

99 S.W.3d 68 (Mo.App. E.D. 2003) 9

Schroff v. Smart,

120 S.W.3d 751 (Mo.App. W.D. 2003) 9

Scott v. Blue Springs Ford Sales, Inc.,

215 S.W.3d 145 (Mo. App. W.D. 2006) 20

Shelton v. Farr,

996 S.W.2d 541 (Mo. App. W.D. 1999) 11

State ex re. Reed v. Reardon,

41 S.W.3d 470, (Mo. banc 2001)..... 11

Statutes

134.010(5)(a)&(b) 20

143.011 to 143.996 19

143.091 7

143.121 18, 19

143.971 6

512.020 9

535.073 1, 12

536.073 12, 13, 14, 15

621.050 13, 15

Chapter 135..... 5, 6, 8, 10, 15, 17, 18, 19, 20, 21

Rules

Missouri Supreme Court Rule of Civil Procedure 74.04..... 14

Rule 53.03..... 23

Rule 84.06(b) 23

Regulations

1 CSR 15-3.446(6)	13, 15
-------------------------	--------

STATEMENT OF FACTS

Appellants, Charles and Mary Ann Harter (hereby collectively referred to as the “Harters”), are Missouri taxpayers who challenged the Department of Revenue’s (“DOR”) property tax credit computations for 2010, 2011, 2012 and 2013. LF 001.

On August 11, 2014, DOR issued two separate Findings of Fact and Decisions. LF 005-016, 017-020. The central issues revolved around whether the Harters were eligible for a Missouri Property Tax (“PTC”) credit, and if so, how to calculate the credit. LF 15. The primary issue was whether nontaxable Social Security benefits must be added to Missouri adjusted gross income (“MAGI”) pursuant to chapter 135 of the Revised Statutes of Missouri.¹ LF 015. In the Harters’ tax filings, the Harters computed their Missouri Adjusted Gross Income (“MAGI”) without including any nontaxable Social Security or pension/annuity income to that figure. LF 007, 009, 010, 020. When calculating “income” for PTC purposes, DOR added the nontaxable Social Security and pension/annuity income, as reported on the Harters’ tax filings, to the MAGI that the Harters reported. LF 007, 009,

¹ Later, at the Administrative Hearing Commission, the nontaxable annuities/pensions were also included in this discussion. However, they were not addressed in DOR’s Decision.

010, 015, 020. For year 2010, this reduced the Harters' PTC. LF 007. For 2011, 2012, and 2013, this caused the Harters to not receive a PTC because their income exceeded the maximum upper limit. LF 009, 011, 020. "As a result, refunds were denied for all four periods and assessments were made to recover refunds previously issued for 2010 and 2011. LF 6-8, 16."

Pursuant to Section 135.010(1), RSMo, a claimant for the PTC must meet one of the following eligibility requirements:

- Claimant or spouse is sixty-five;
- Claimant or spouse is a veteran;
- Claimant or spouse is disabled;
- Claimant has reached the age of sixty and received surviving spouse Social Security benefits.

The Harters have focused on disability in this appeal. DOR did not specifically address disability other than to say that the burden is on the taxpayer to establish disability with each year's claim, pursuant to Section 143.971, RSMo. LF 015-016. However, DOR's findings of fact indicate that the Harters did satisfy Section 135.010(1), RSMo. In 2010, the Harters received a PTC. LF 007. In 2011, 2012, and 2013, DOR calculated the Harters' income for the purposes of the PTC, but did not receive a PTC because the Harters' income was too high, not because they were ineligible. LF 007-011, 017-018.

Another issue, not in this appeal, involved a “qualified health insurance premium subtraction” (“QHIP”) for Mary Ann Harter’s health insurance premiums for 2010, 2011, and 2012. LF 015. After the Harters provided the necessary paperwork, their QHIP subtraction was included in DOR’s calculations. LF 007-008, 011.

On or about September 15, 2014, the Harters appealed DOR’s Decision to the Administrative Hearing Commission (“AHC”). LF 001-004. The Harters argued that, when calculating “income” for the PTC, DOR is bound by the Missouri income tax statutes, pursuant to Section 143.091, RSMo. LF 002. They argued that adding nontaxable Social Security and pension/annuity benefits to household income incorrectly reduced or denied the Harters a tax refund. LF 002-003. Additionally, the Harters contended that they were wrongly denied a QHIP subtraction. LF 003. The Harters alleged that DOR acknowledged disability for tax years 2008-2009 in a letter written by DOR for the 2009 tax year, which constitutes a “stipulation of counsel that taxpayers are entitled to a QHIP subtraction.” LF 003. ¶9.

Both parties filed Motions for Summary Decision. LF 054-85; 090-110. In their motions, both parties agreed that Mrs. Harter is disabled for the purposes of PTC eligibility. LF 54; 103. On January 12, 2016, the AHC denied the Harters’ Motion for Summary Decision and granted DOR’s. LF 241. On February 5, 2016, the AHC issued an Amended Decision, which

became the final decision. LF 276-301. The Amended Decision again denied the Harters' Motion for Summary Decision and granted DOR's. LF 301.

The AHC calculated the Harters' "income" pursuant to Section 135.010(5), in order to determine whether the Harters' income exceeded the "maximum upper limit" to receive a PTC, and if not, to calculate the PTC. LF 292-99. The Harters' calculated their income by only including their taxable income in their claim for a PTC. LF 294-95; 297. With regard to their Social Security and pensions/annuities, the Harters did not add the nontaxable portions. *Id.* The AHC required the nontaxable amounts of Social Security benefits and pensions/annuities to be added to the Harters' calculated sum. LF 293-99. As a result, the AHC's calculations were consistent with DOR's Decision and the AHC ordered that portions of the Harters' tax refunds for 2010 and 2011 to be recouped. LF 281, 283, 285, 286, 301.

The Harters received the QHIP subtraction from the AHC. LF 290. In the Amended Decision, the AHC also found Mrs. Harter to be disabled for the purposes of the PTC. (LF 291-92).

The Harters now appeal the AHC's granting of summary decision, the AHC's determination of disability, and the AHC's findings that nontaxable pensions/annuities and Social Security are to be added to the MAGI, and make a discrimination claim.

ARGUMENT

1. The Harters Lack Standing to Address Disability Because They Are Not an Aggrieved Party

The Harters are not an aggrieved party; therefore, the Harters' Points II and IV lack standing. Under Section 512.020, RSMo, a party must be "aggrieved" to have any right to appeal. *Schroff v. Smart*, 120 S.W.3d 751, 754 (Mo.App. W.D. 2003). An aggrieved party is one who suffers from an infringement or denial of legal rights. *City of Brentwood v. Barron Holdings Intern.*, 66 S.W.3d 139, 142 (Mo. App. E.D. 2001). The judgment in question must operate directly and prejudicially on the party's personal or property rights or interests and such effect must be immediate and not merely a possible remote consequence. *HHC Medical Group, P.C. v. City of Creve Coeur Bd. Of Adjustment*, 99 S.W.3d 68, 73 (Mo.App. E.D. 2003) . To have standing, the party seeking relief must show two things: (1) the party is sufficiently affected by the action being challenged to justify consideration by the court of the validity of the action; and (2) the action violates the rights of the particular party who is attacking it and not some third party. *Id.*

It appears what the Harters attempt to argue in Point II is that there was a stipulation of counsel which would bind DOR to a decision made in 2009 regarding disability. *See e.g.* App. Brf. 38; *see also* LF 057, ¶8. The document that the Harters contend is a stipulation of counsel is a June 25,

2010, letter from DOR addressing the 2009 tax year, which is not at issue in this case. LF 057, 061-62. In that letter, DOR stated the following:

Please be advised that I have put a note in your file and in our system, stating that your wife was adjudged disabled by the PSRS, and not the Social Security Administration, so a Form SSA-1099 is not required. Hopefully this will avoid any future problems with processing your property tax credit. If, however, you experience any problems in the future, please do not hesitate to call me.

LF 62. That letter describes the disability status of Mary Ann Harter. The June 25, 2010, letter, even if it had some force or effect, only establishes that for tax year 2009, Mary Ann Harter was determined to be disabled by the Public School Retirement System. LF 061-62. However, DOR has already recognized Mrs. Harter's disability. LF 087; 292. The letter can do nothing to further the Harters' claim to a PTC.

The determination whether a claimant is disabled is a matter of eligibility. *See* Section 135.010(1), RSMo. If one is deemed disabled, that person is eligible to be a "claimant." *Id.* However, it does not have a bearing on how to calculate "income" for the purposes of the PTC. *See* Sections 135.010 & 135.030. It is clear from AHC's Decision that the Harters were

given disability status for each of the contested tax years. The AHC stated that “we find that Mrs. Harter’s disability was the qualifying disability...” LF 291. DOR agreed that Mrs. Harter was disabled in its response to the Harters’ Motion for Summary Decision. LF 103. As a result, the Harters’ were treated as claimants by the AHC. LF 276-301. There is nothing more the AHC could have done for the Harters with regard to disability. Further, even if DOR’s 1099 requirement is discriminatory, the Harters were not harmed. For these reasons, the Harters lack standing because they are not aggrieved.

In the alternative, the issue is now moot. “A threshold question in any appellate review of a controversy is the mootness of the controversy.” *State ex re. Reed v. Reardon*, 41 S.W.3d 470, 473 (Mo. banc 2001) (quoting *Armstrong v. Elmore*, 990 S.W.2d 62, 64 (Mo. App. W.D. 1999)). In terms of justiciability, “[a] cause of action is moot when the question presented for decision seeks a judgment upon some matter which, if the judgment was rendered, would not have any practical effect upon any then existing controversy.’” *Id.* (quoting *Shelton v. Farr*, 996 S.W.2d 541, 543 (Mo. App. W.D. 1999)).

Points II and IV of the Harters’ brief revolve around the issue of whether Mrs. Harter was “disabled.” App. Brf. 54. However, as stated previously, both DOR and the AHC agree that Mrs. Harter is disabled for the

purposes of the PTC. LF 54; 103. While there may have been a short time that DOR contested Mrs. Harter's disability status, the record demonstrates that both DOR and the AHC agree with the Harters that Mrs. Harter is disabled. A judgment regarding the issues of disability or how to prove disability would have no practical effect upon this appeal and is moot.

Finally, the Harters' understanding of res judicata is inaccurate. "Res judicata prevents a party from relitigating facts or questions that have been settled by judgment on the merits in a previous action." *Healthcare Services of the Ozarks Clements v. Copeland*, 198 S.W.3d 604, 612 (Mo. banc 2006)(citing *Clements v. Pittman*, 765 S.W.2d 589, 591 (Mo. banc 1989) The Harters cite to no previous litigation or judgment on the merits in a previous action that would invoke res judicata.

I. The Administrative Hearing Commission Had the Authority to Dispose of this Matter by Summary Decision Because Section 535.073.3, RSMo Requires the Administrative Hearing Commission to Establish Rules for Summary Decision

In their Point I, the Harters argue that the AHC lacks the authority to dispose of a case on summary decision. App. Brf. 15. The Missouri Administrative Procedure Act mandates the AHC to adopt procedures for, among other things, summary judgment. Section 536.073.3, RSMo, states in relevant part:

3. The administrative hearing commission shall adopt rules providing for informal disposition of a contested case by stipulation, consent order, agreed settlement or by disposition in the nature of default judgment, judgment on the pleadings, or summary judgment.

The use of the word “shall” is not discretionary.

Section 621.050.2, RSMo governs DOR appeals for tax cases. It states that, “[t]he procedures applicable to the processing of such hearings and determinations shall be those established by chapter 536....” Section 621.050.2, RSMo. Section 621.050.2 specifically references chapter 536. Chapter 536 specifically mandates summary judgment procedures. The AHC has the authority to rule on summary decision.

The AHC’s promulgated rules do set out a procedure for summary decision. The relevant rule, 1 CSR 15-3.446(6), states as follows:

(6) Summary Decision. Summary decision is a motion for decision without hearing that relies on matters outside the pleadings and is not filed jointly by all parties.

(A) The commission may grant a motion for summary decision if a party establishes facts that

entitle any party to a favorable decision and no party genuinely disputes such facts.

(B) Parties may establish a fact, or raise a dispute as to such facts, by admissible evidence. Admissible evidence includes a stipulation, pleading of the adverse party, discovery response of the adverse party, affidavit, or other evidence admissible under the law. A party shall not rely solely on its own pleading to establish any fact, or to raise a genuine issue as to any fact. A party may meet the requirements for the content of a motion, or for a response to a motion, under section (6) of this rule by complying with Missouri Supreme Court Rule of Civil Procedure 74.04.

(C) Petitioner shall not file a motion for summary decision before the time for filing a responsive pleading has expired, except with the consent of all other parties.

The Harters reference a number of other rights provided by chapter 536, such as a right to call and examine witnesses or to introduce exhibits. App. Brf. 25. It is true that the Harters possessed those rights. However, in

order to invoke those rights, a factual conflict must arise to warrant a hearing. In order to create such a conflict, the Harters could have introduced a stipulation, pleading of the adverse party, discovery responses, an affidavit, or any other evidence admissible under the law. 1 CSR 15-3.446(6)(B). The Harters were unable to either identify a factual conflict or substantiate one with evidence; therefore, the rights associated with a hearing were disposed of along with the case itself.

Because chapter 621 incorporates the procedures outlined in chapter 536, and because chapter 536 mandates a process for summary judgment, the AHC was within its authority to create a process for summary decision for taxation cases. Because the AHC did create such rules, and followed those rules, the AHC was within its authority to dispose of this matter by summary decision.

II. The AHC Correctly Calculated the Harter's "Income" for the Purpose of Calculating Their Property Tax Credit

One of the factors in determining whether a claimant will receive a PTC and how to calculate the PTC is income. Section 135.030.1 & .2 sets out that formula and states as follows:

1. As used in this section:

(1) The term "maximum upper limit" shall, for each calendar year after December 31, 1997, but before calendar year 2008, be the sum of twenty-five thousand dollars. For all calendar years beginning on or after January 1, 2008, the maximum upper limit shall be the sum of twenty-seven thousand five hundred dollars. In the case of a homestead owned and occupied for the entire year by the claimant, the maximum upper limit shall be the sum of thirty thousand dollars;

(2) The term "minimum base" shall, for each calendar year after December 31, 1997, but before calendar year 2008, be the sum of thirteen thousand dollars. For all calendar years beginning on or after January 1, 2008, the minimum base shall be the sum of fourteen thousand three hundred dollars.

2. If the income on a return is equal to or less than the maximum upper limit for the calendar year for which the return is filed, the property tax credit shall be determined from a table of credits based upon the

amount by which the total property tax described in section 135.025 exceeds the percent of income in the following list:

If the income on the return is: The percent is:

Not over the minimum base 0 percent with credit not to exceed \$1,100 in actual property tax or rent equivalent paid up to \$750

Over the minimum base but 1/16 percent accumulative per \$300 from 0 percent to 4 percent. not over the maximum upper limit

The director of revenue shall prescribe a table based upon the preceding sentences. The property tax shall be in increments of twenty-five dollars and the income in increments of three hundred dollars. The credit shall be the amount rounded to the nearest whole dollar computed on the basis of the property tax and income at the midpoints of each increment. As used in this subsection, the term "accumulative" means an increase by continuous or repeated

application of the percent to the income increment at each three hundred dollar level.

Section 135.010(5) describes how to calculate that income:

(5) "Income", Missouri adjusted gross income as defined in section 143.121 less two thousand dollars, or in the case of a homestead owned and occupied, for the entire year, by the claimant, less four thousand dollars as an exemption for the claimant's spouse residing at the same address, and *increased, where necessary*, to reflect the following:

(a) Social Security, railroad retirement, and veterans payments and benefits unless the claimant is a one hundred percent service-connected, disabled veteran or a spouse of a one hundred percent service-connected, disabled veteran. The one hundred percent service-connected disabled veteran shall not be required to list veterans payments and benefits;

(b) The total amount of all other public and private pensions and annuities;

(c) Public relief, public assistance, and unemployment benefits received in cash, other than benefits received under this chapter;

(d) No deduction being allowed for losses not incurred in a trade or business;

(e) Interest on the obligations of the United States, any state, or any of their subdivisions and instrumentalities[.]

(emphasis added).

The Harters incorrectly interpret Section 135.010(5). They seek an interpretation of that statute that would limit their “income” to the amount determined by the income tax law set out in Section 143.121. App. Brf. 46. They seek a framework for the PTC that would be controlled by “sections 143.011 to 143.996.” *Id.* However, chapter 143 governs Missouri’s income tax. It does not govern the PTC, which is governed by chapter 135, which is separate from chapter 143. The “Missouri adjusted gross income as defined in section 143.121” is a starting point in defining the “income” to be used in the calculations set out in Section 135.030. After finding the MAGI, as defined by Section 143.121, that amount is to be “increased, where necessary,

to reflect,” among other things, “social security” and “public and private pensions and annuities.” Section 134.010(5)(a)&(b).

The AHC correctly increased the Harters’ MAGI for Social Security and pensions/annuities.² In construing a tax statute, the plain language determines the legislature’s intent. *E&B Granite, Inc. v. Director of Rev.*, 331 S.W.3d 314, 318 (Mo. banc 2011). If the intent of the legislature is clear and unambiguous and can be applied by giving the language used its plain and ordinary meaning, no statutory construction or interpreting is required. *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 455 (Mo. banc 2011) (*quoting Scott v. Blue Springs Ford Sales, Inc.*, 215 S.W.3d 145, 166 (Mo. App. W.D. 2006)).

With regard to pensions and annuities, Section 135.010(5)(b) requires MAGI to be increased by “all...public and private pensions and annuities.” In the underlying case, the Harters argued that the nontaxable portion of their annuities should not be included in that calculation. LF 002; 295. However, the plain language is clear that the “total amount” of “all...public and private pensions and annuities” is to be added to the MAGI. Section 135.010(5)(b). In chapter 135, there is no distinction between taxable and nontaxable pensions and annuities; therefore, the AHC correctly included both. LF 295-96.

² This point is not directly addressed by the Harters in their brief.

With regard to the Harters' Social Security Disability benefits, similar logic applies. Section 135.010(5)(a) states that the MAGI is to be increased by "Social Security...benefits." No distinction is made between age related Social Security and Social Security disability. Again, for this reason, the AHC correctly included all of the Harters' Social Security benefits in its calculations.

CONCLUSION

For the reasons stated in this brief, the Administrative Hearing Commission's Decision should be affirmed.

Respectfully submitted,

CHRIS KOSTER
Attorney General

/s/ Curtis Schube
CURTIS SCHUBE
Assistant Attorney General
Missouri Bar No. 63227
P.O. Box 899
Jefferson City, MO 65102
(573) 751-7728
Facsimile (573) 751-8660
Curtis.Schube@ago.mo.gov

ATTORNEYS FOR THE
MISSOURI DEPARTMENT OF
REVENUE

Certificate of Service and Compliance with Rule 84.06

I hereby certify that on the 16th day of August, 2016, a true and correct copy of the foregoing was served via the Missouri e-filing system to:

Charles A. Harter-Appellant

harleycharter@sbcglobal.net

The undersigned further certifies that this brief contains 3,740 words in compliance with the limitation in Rule 84.06(b) and contains the signature and required information in compliance with Rule 53.03.

/s/ Curtis Schube

Curtis Schube